



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

April 16, 1998

Ms. Linda Wiegman  
Supervising Attorney  
Office of General Counsel  
Texas Department of Health  
1100 West 49th Street  
Austin, Texas 78756-3199

OR98-0974

Dear Ms. Wiegman:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 114900.

The Texas Department of Health (the "department") received an open records request for two complaints filed against Roosevelt Gardens. The requestor also seeks the related Reports of Contact, with attachments. You explain that Roosevelt Gardens, a "special care facility" licensed by the department, provides services primarily to persons with acquired immune deficiency syndrome or other terminal illnesses. *See* Health & Safety Code § 248.002(8). You therefore seek to withhold the names of Roosevelt Gardens' clients pursuant to section 81.103(a) of the Health and Safety Code and pursuant to common-law privacy as incorporated into section 552.101 of the Government Code.

Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We agree that the identity of individuals with AIDS is protected by the common-law right of privacy.

We note, however, that one of the individuals identified in the Report of Contact is deceased. The right of privacy is purely personal and lapses upon death. *See Moore v. Charles B. Pierce Film Enters. Inc.*, 589 S.W.2d 489 (Tex. Civ. App.--Texarkana 1979, writ *ref'd n.r.e.*). *See also* Attorney General Opinions JM-229 (1984), H-917 (1976).

Consequently, the department may not withhold the deceased individual's name pursuant to common-law privacy.

As noted above, you also contend that the information at issue is made confidential under section 81.103(a) of the Health and Safety Code, which makes confidential an AIDS or HIV "test result." It is not apparent to this office that section 81.103(a) is applicable in this instance. Even assuming that section 81.103(a) does apply, such confidentiality in this instance would only be co-extensive with the protection afforded by common-law privacy because section 81.103(a) confidentiality does not extend to "test results" about a deceased individual. *See* Open Records Decision No. 529 (1989) at 7. We have marked in brackets the information that the department must withhold.<sup>1</sup> The remaining information must be released to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Vickie Prehoditch  
Assistant Attorney General  
Open Records Division

VDP/RWP/glg

Ref.: ID# 114900

Enclosures: Marked documents

cc: Ms. Charlotte Hale  
Executive Director  
Project Transitions, Inc.  
P.O. Box 4826  
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(w/o enclosures)

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<sup>1</sup>The de-identification of the records at issue is sufficient to protect the privacy interests of the clients. *See Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995). With the deletion of clients' names, we do not believe that any additional information need be withheld pursuant to common-law privacy.